one dollar or even 10 cts. There are three exceptions to this :—

(a) A youthful offender may be convicted, admonished and discharged under Section 293;

(b) A first offender may be convicted and released on probation, under Section 294;

(c) In special circumstances set out in Section 173A a charge may be dismissed, provided that a conviction has not been recorded.

In all cases it is important that the record should clearly show what has been decided and what was the actual order. It is a very grave mistake to regard these matters as in the nature of "red tape" or to disregard any of them even in a trivial case. A great many of the important rights of the subject under the English law are not expressed in any substantive statute but are guarded and enforced only by rules of procedure. This may, and indeed does, make the Codes cumbersome and in some ways difficult to follow but however difficult it may be, Magistrates must study them closely and apply them strictly, in all circumstances.

In my opinion, the evidence in this case was sufficient to show that the accused had committed an assault of a more than trivial character on the complainant and the Magistrate should have found the accused guilty accordingly under Section 323. In exercise of the powers of revision, I accordingly amend the conviction of the accused for affray to a conviction for causing hurt but in view of her youth and of the facts that the assault was not very serious and that the two families are connected, I think it is sufficient to release her as a first offender on giving a bond with one surety for $25/- for her good behaviour for 3 months under Section 294 of the Code.

Order Accordingly.

PUBLIC PROSECUTOR v. ANNUAR BIN ALI.

[Orig. Crim. Juris. (Spenser-Wilkinson, J.) October 1, 1946]

Criminal Procedure Code Section 190 — Trial with Assessors — Submission of no case to meet.

In this case the accused was charged with murder. At the close of the case for the prosecution, Counsel for the defence made a submission under Section 190 of the Criminal Procedure Code that no case had been made out which would warrant a conviction.

Held, that in a trial with Assessors unless it is clear to the Judge at the close of the case for the prosecution that the assessors could not reasonably find the accused guilty on the evidence adduced if full weight be given to it, then the accused must be called upon for his defence.

Case referred to :—

(4) *Public Prosecutor, Johore v. Fong Ah Tong and another* (1940) M.L.J. 240.

CRIMINAL TRIAL.

A. J. Grattan-Bellew (D. P. P.) for the Public Prosecutor.

H. Y. Teh for the Accused.

Spenser-Wilkinson, J. : — In this case the accused was charged with murder. The facts were that the deceased was found lying beside the path about 10 feet outside the accused's house by the last guest to leave a feast in a nearby house which had been attended by the deceased, the accused and many others.

This last guest was the first person to find deceased lying there and asked him what had happened to him and the deceased stated that the accused had assaulted him. Shortly afterwards the deceased's three daughters were sent to his assistance by this guest and the deceased again stated to his daughters that the accused had struck him with a parang.

These dying declarations, corroborated to some extent by the evidence of the accused's conduct in passing close by the dying man attended by his children without rendering any assistance or, indeed, taking any notice whatever of their presence, and the presence of blood-stains on a mat found on a platform attached to his house, were the only evidence that it was the accused who had struck the fatal blows. At the close of the case for the prosecution, Counsel for the defence made a submission under Section 190 of the Criminal Procedure Code that no case had been made out which would warrant a conviction and argued that this section had not only the same meaning but also the same effect as Section 180 of the Criminal Procedure Code. The case of *Public Prosecutor, Johore v. Fong Ah Tong and another*[1] was not cited to me. Had that case been cited to me at the time, it is more than probable that I should have reserved the point for the decision of the Court of Appeal at the conclusion of the hearing.

My ruling on the point would not, however, have been different, even had this case been cited; for with the greatest respect I am unable to agree with the decision. Laville, J. in his judment in that case says :—

> In my view in that section the word Court means the Judge sitting to try a criminal case and

excludes the assessors: under Chapter XXI, Criminal Procedure Code the use of the word Court throughout makes it clear that the assessors do not form part thereof but are rather aiders and helpers of the Court on matters of fact whose opinion the Court may use to confirm it in its final judgment.

I agree that in Section 190 the word "Court" means the Judge, but I am unable with respect to agree that the assessors are merely aiders and helpers of the Court on matters of fact whose opinions the Court may use to confirm it in its final judgment. In my opinion, assessors are normally the sole judges of fact, and the trial Judge in a trial with the aid of assessors only becomes a judge of fact either if the assessors disagree or if, when the assessors agree, he is unable to agree with both assessors. This is borne out by the provisions of Section 198 and to my mind the phrase "unable to agree with them" in sub-section (ii) of that section implies much more than that the Judge might himself have reached a different conclusion. It seems to me to suggest such a strong measure of disagreement that the Judge considers the opinions of the assessors unreasonable having regard to the evidence.

If I am right in thinking that the assessors are the judges of fact, then, although the wording of Sections 180 and 190 is exactly the same, and although the actual words no doubt have the same meaning in both sections, in my view, the practical effect of the two sections in their context is different. In each case the Court has to acquit "if it finds" that no case against the accused has been made out which if unrebutted would warrant a conviction. When a Judge is sitting alone, it is easy for him to reach this finding, because he is the sole judge of law and of fact, and he is the person who has to be satisfied beyond a reasonable doubt of the accused's guilt and must know at that stage whether or not he has believed the witnesses; but where the Judge is sitting with the assessors, he is unable to know at the close of the case for the prosecution what view the assessors will take of the evidence which has up to that point been produced. The Judge himself may not be altogether satisfied beyond all doubt, but the assessors may; unless, therefore, it is clear to the Judge at the close of the case for the prosecution that the assessors could not reasonably find the accused guilty on the evidence adduced if full weight were given to it, then it seems to me that the accused must be called upon for his defence.

I derive no assistance from the wording of Section 214 which deals with the position when the trial is by jury. There, at the close of the case for the prosecution, the Court directs a verdict of not guilty if there is *no* evidence that the accused committed the offence. This is strong language, and I do not think that a Judge trying a case with the aid of assessors needs to go so far under Section 190 as to decide that there is no evidence that the accused committed the offence. I read Section 190, in its context as part of Chapter XXI of the Criminal Procedure Code, as meaning that if, at the close of the case for the prosecution, the Judge finds that there is insufficient evidence then before the Court upon which reasonable assessors could find the accused guilty if no more is heard, then he must acquit the accused, but not otherwise. Except in exceptional circumstances, such as a principal witness being obviously unreliable, I do not think that a Judge, trying a case with the aid of assessors, can properly, on a submission of "no case", go into such questions as the weight of the evidence or the credibility of witnesses, which are matters to be dealt with by the Assessors at the conclusion of the whole case.

I would add that in this case there was ample evidence in my opinion to convict the accused at the close of the case for the prosecution, provided that the witnesses who deposed to the dying declaration were believed and that there was reasonable ground for assuming that the deceased spoke the truth when he made that declaration. I was of opinion — although I felt it improper to express any opinion at that stage — that both these conditions were fulfilled and there was corroboration of the deceased's statement. I therefore called upon the accused for his defence, and at the conclusion of the case both assessors found accused guilty of murder, a conclusion with which I did not disagree.

Accused Convicted.

LIANG HUAY HOO AND ANOTHER v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Bostock Hill, J.) October 11, 1947]

Penal Code s. 411 — Possession of property reasonably suspected of being stolen — Johore Stolen Property and Habitual Criminals Enactment (Enactment No. 34) — Alteration of Charges.

In this case, on charges under s. 411 of the Penal Code the first accused was convicted under s. 2 (i) of the Johore Stolen Property and Habitual Criminals Enactment (Enactment No. 34) and the second accused was convicted under s. 411 of the Penal Code. On appeal the conviction of the second accused was altered to a conviction under s. 2 (i) of the Johore Stolen Property and Habitual Criminals Enactment, the facts not justifying the original conviction.